THE DECALOGUE JOURNAL

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LOYALTY

. . . . It is easier to say what loyalty is not than to say what it is. It is not conformity. It is not passive acquiescence in the status quo. It is not preference for everything American over everything foreign. It is not an ostrich-like ignorance of other countries and other institutions. It is not the indulgence in ceremony—a flag salute, an oath of allegiance, a fervid verbal declaration. It is not a particular creed, a particular version of history, a particular body of economic practices, a particular philosophy.

It is a tradition, an ideal, and a principle. It is a willingness to subordinate every private advantage for the larger good. It is an appreciation of the rich and diverse contributions that can come from the most varied sources. It is allegiance to the traditions that have guided our greatest statesmen and inspired our most eloquent poets —the traditions of freedom, equality, democracy, tolerance, the tradition of the higher law, of experimentation, cooperation, and pluralism. It is a realization that America was born of revolt, flourished on dissent, became great through experimentation.

Independence was an act of revolution; republicanism was something new under the sun; the federal system was a vast experimental laboratory. Physically Americans were pioneers; in the realm of social and economic institutions, too, their tradition has been one of pioneering. From the beginning, intellectual and spiritual diversity have been as characteristic of America as racial and linguistic. . . .

. . . . From the beginning Americans have known that there were new worlds to conquer, new truths to be discovered. Every effort to confine Americanism to a single pattern, to constrain it to a single formula, is disloyalty to everything that is valid in Americanism.

—HENRY STEELE COMMAGER
Who Is Loyal To America?

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BENJAMIN WEINTROUB, Editor

IN THIS ISSUE

The Editor will be glad to receive contributions of articles of modest length, from members of The Decalogue Society of Lawyers only, upon subjects of interest to the profession. Communications should be addressed to the Editor, Benjamin Weintroub, 82 West Washington Street, Chicago 2, Ill.

Decalogue Award to Hon. Harry S. Truman

Statesman and National Leader to Deliver Address on April 27, in the Sherman Hotel

Former President Harry S. Truman will be presented with the 1954 Award of the Society for his contributions to the cause of democracy and the general welfare of the American people at the Annual Patriotic Dinner of the Society on Wednesday evening, April 27, 1955, in the Sherman Hotel Grand Ballroom.

"Mr. Truman is joining the illustrious company of those who have received the Decalogue Award because it has seemed to us, as dedicated Americans, that he has made very considerable contributions to the great cause in which we all believe, regardless of party labels," said President, Elmer Gertz. "His commissions on civil rights, higher education, and naturalization and immigration performed historic tasks of pioneering in the field of human relations. The United States Supreme Court decisions outlawing restrictive covenants in housing and segregation in education stem from them. His appointments of Negroes and other representatives of minority groups to high office were inspiring steps in eliminating the blight of discrimination. He advanced the cause of de-segregation in the Armed Forces of the United States and the nations confronted. The Marshall Plan, the program of technical and economic aid to the nations of the world and particularly the Point 4 Program gave meaning and impetus to our struggle against Communism. We as Jews and as Americans feel a sense of gratitude to President Truman for what he did to aid the refugees from totalitarian inhumanity and toward the establishment, recognition and strengthening of the State of Israel, the newest democracy which follows the inspiration of our oldest democracy."

Judge Henry L. Burman, Judge of the Superior Court, Cook County, and former president of the Covenant Club of Illinois will receive the Inter-Organization Award.

Further details of the arrangements will be announced later. The arrangements committee is headed by the Society's 1st Vice-President, Bernard H. Sokol. The Vice-Chairmen of the committee are Morton H. Schaeffer and Judge Harry G. Hershenson. Past President David F. Silverzweig was chairman of the Merit Award Committee which selected Mr. Truman.

The Requirement of Residence in Divorce Actions

By A. BUDD CUTLER

Member A. Budd Cutler is practising law in Miami, Florida.

Residence is defined by Black in his *Law Dictionary* as ". . . a fixed and permanent abode or dwelling . . . as contradistinguished from a mere temporary locality of existence." The essential ingredients of residence are intention and presence. The word "resident" is frequently interchanged with domiciliary, citizen or legal resident. It is perhaps best defined as ". . . an abode, animo manendi; a place where a person lives or has his home, to which, when absent he intends to return, and from which he has no present purpose to depart." *17 Am. Jur. 279, Divorce and Separation, §249.*

Since residence or domicile may be acquired in an instant by the forming of an intention to reside where a party is located, the legislatures have added an additional requirement, that of a fixed period of time. The statutory periods of residence vary widely throughout the United States and Territories. In Nevada and the Virgin Islands the plaintiff must be a resident for six weeks. In Louisiana there is no residence period requirement except for desertion, while in Massachusetts there is a five year residence requirement for new arrivals.

As a result of the war years many states have special provisions for the relief of servicemen. (i.e., Florida Statutes 1953, §46.12, "any person in any branch of the service of the government of the United States . . . and the husband or the wife of any such person, if he or she be living within the borders of the State of Florida shall be deemed prima facie to be a resident of the State of Florida . . ."). For special provisions covering insanity, adultery and desertion, etc., and a summary of the law of all states and territories, see the chart at the end of this article.

From the hodge-podge of statutory regulations the courts have come to general agreement that residence is equal to domicile and is a jurisdictional question, that jurisdiction cannot be acquired by agreement, cannot be assumed from the entry of a Decree Pro Confesso, and that uncorroborated testimony of the plaintiff is insufficient to prove residence. *Phillips v. Phillips, 1 So. 2d. 186 (Fla. 1941).*

Before coming to the question of how to prove residence it should be stated that while at common law the residence of the wife is that of the husband, it is generally accepted that a wife may establish a separate place of residence if grounds for divorce exist. *Curley v. Curley, 198 So. 584 (Fla. 1940).*

All jurisdictions require that permanent residence be acquired before commencing an action for divorce. As a practical matter there are certain techniques for proving the bona fides of a claim of permanent residence. These become increasingly important in jurisdictions where new arrivals are seeking divorce. The fact that a plaintiff goes to a state for the purpose of getting a divorce will not bar his being a permanent resident, but . . ."the taking up of an abode . . . for the sole purpose of prosecuting a divorce is not the establishment of a bona fide residence . . . there must be coupled with the sojourn in the state the intent to make this state the legal residence of the plaintiff." *Phillips v. Phillips, supra.*

Since intent is a basic requirement of residence, "the best proof of one's domicile is where he says it is." *Ogden v. Ogden, 33 So. 2d. 870 (Fla. 1947).* Claimed domicile may be supported ". . . by the place of one's business, profession or trade, where he holds his church or lodge membership, and where he votes and exercises other indicia of citizenship." *Ogden v. Ogden, ibid.* Some other indicia of residence are ownership, or lease of real estate, creation of bank accounts, enrollment of children in school and the abandonment of interests in the former residence.

While in the case of a long time resident, a trip or temporary employment would not discredit the claim of residence; however, in the case of a newcomer to a community, such actions would tend to discredit the claim of domicile. Of course, legally, trips or temporary

employment in another jurisidiction do not result in a change of residence. *Sultan v. Sultan, 7 So. 2d. 108, (Fla. 1942).*

In addition to the foregoing, the plaintiff should avoid the creation of any other state of facts which would tend to discredit his claim of residence. For example, the courts frown on the status of a recently arrived person living in a hotel who claims to be a permanent resident. Also, if the new resident always worked for a living in his former home, it would be wise for him to accept employment where he now claims domicile. *Florida Law of the Family, Marriage and Divorce, the Harrison Company, 1950, page 389.*

Although, as previously indicated, jurisdiction cannot be acquired by agreement, the United States Supreme Court has said that where the defendant makes a personal appearance and the question of jurisdiction is determined, the defendant cannot later make a collateral attack on the Decree. *Sherrer v. Sherrer, 334 U. S. 343, 68 S. Ct. 1087. (1948).* Thus, after Final Decree the defendant who appears in person cannot collaterally allege that the plaintiff was not a bona fide resident.

If the reader will refer to the chart at the conclusion of this article he will note the wide diversity of residence requirements in the various jurisdictions. The writer would be inclined to say that Florida's ninety day residence requirement is fairer to the litigants than the requirement of five years which Massachusetts imposes. It would also seem that justice demands that the wide diversity of statutory requirements for residence be eliminated and that a uniform law on the residence required for divorce should be adopted.

Residence Requirements and Grounds for Divorce in Different States

STATE	TIME	WHO	SOLDIER	SPECIAL PROVISIONS
Alabama	1 yr	P		Two years for non-support.
Alaska	2 yrs	P		
Arizona	1 yr	P		
Arkansas	2 Mos	P		Three months prior to decree.
California	1 yr	P		
Colorado	1 yr	P		Except adultery and cruelty committed within state.
Connecticut	3 yrs	P or D	Yes	Except: Cause of action arose within state, P domiciled at time of marriage and returned.
Delaware	2 yrs	P or D		Except adultery or bigamy; if either party resident when cause of action arose.
District of Columbia	1 yr	P		Two years if cause of action arose outside of D. C.
Florida	90 days	P	Yes	
Georgia	6 Mos	P		
Hawaii	2 yrs			
Idaho	6 weeks	P		
Illinois	1 yr	P		Except: Cause of action accrued in state or one party when cause accrued—six months.
Indiana	1 yr	P or D		Except: Insanity—five years.
Iowa	1 yr	P		Except where D resident and personally served.
Kansas	1 yr	P	Yes	Except: Insanity and spouse outside state—five years.
Kentucky	1 yr			
Louisiana	None			Except desertion—two years.

Maine	6 Mos	P		Except: D resident, parties married in state, cohabited in state after marriage, or P within state when cause of action accrued.
Maryland	1 yr	P or D		Except: Cause of action arose within Md. and except Insanity—two years.
Massachusetts	5 yrs	P		Except: Married while residents—then three years.
Michigan	1 yr	P		Except: D resident, cause of action accrued in state and residence continuous since.
Minnesota	1 yr	P		Except: Adultery committed while plaintiff resident.
Mississippi	1 yr	P or D		
Missouri	1 yr	P		Except: Cause of action accrued in state or when one party was resident.
Montana	1 yr	P		
Nebraska	2 yrs	P or D		If cause accrued in state—one year. Except: Marriage within state and P continues residence.
Nevada	6 weeks	P or D		Except: Cause of action accrued in state while P and D residents.
New Hampshire	1 yr	P		Except: Both domiciled when action commenced or P domiciled and D served.
New Jersey	2 yrs	P or D		Except: Adultery.
New Mexico	1 yr	P		When wife P then residence of husband for 1 year OK.
New York				Both must be resident when cause accrued, married within state, or P resident when cause accrued.
North Carolina	6 Mos	P or D		
North Dakota	1 yr	P		U. S. Citizen etc. Insanity—five years.
Ohio	1 yr	P		
Oklahoma	1 yr	P	Yes	Insanity and D out of State—five years.
Oregon	1 yr	P		
Pennsylvania	1 yr	P		
Puerto Rico	1 yr	P		Except: Cause accrued within or when one spouse resident.
Rhode Island	2 yrs	P or D (served)	Yes	
South Carolina	1 yr	P or D		
South Dakota	1 yr	P		Except: Married within and P continues to reside.
Tennessee	2 yrs	P		Cause of action accrued within—six months.
Texas	1 yr	P	Yes	
Utah	3 Mos	P		
Vermont	6 Mos	P		One year before final hearing.
Virginia	1 yr	P or D		
Virgin Islands	6 weeks	P		Six weeks continuously within jurisdiction is prima facie evidence of domicile where D served or appears.
Washington	1 yr			
West Virginia	2 yrs	P		Except: Adultery—none is D Served; one year if one party resident when cause accrued; five years if cause not grounds where it accrued.

Compiled from Martindale Hubbell Law Directory, Vol. III, Law Digests, 1954

NOTE: Under the column headed "WHO" it describes whose residence will support action. P is plaintiff and D is defendant. The word yes under the heading "SOLDIER" indicates special provisions for service men. If under the column "SPECIAL PROVISIONS" no time appears this indicates that no time appears in statute.

APPLICATIONS FOR MEMBERSHIP

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DECALOGUE GREAT BOOKS COURSE

The following is the remaining schedule of our Great Books Course. All meetings are held on Mondays at 6:15 at the Decalogue headquarters, 180 W. Washington St. The entire course is free to members and their families.

February 21. John Milton, *Areo Paditica.*

March 7. Jonathan Swift, *Gulliver's Travels.*

March 21. Blaise Pascal, *Pensess*: Selections.

April 4. J. J. Rousseau, *On The Origin of Inequality.*

April 18. Immanuel Kant, *Fundamental Principles of Metaphysic of Morals.*

May 2. Friedrich Nietzsche, *Beyond Good And Evil.*

May 16. John Stuart Mill, *Representative Government.*

May 30. Mark Twain, *Huckleberry Finn.*

Oscar M. Nudelman and Alec E. Weinrob are in charge of the course.

MEYER WEINBERG ADDRESSES SOCIETY

Member Meyer Weinberg, author of *Illinois Divorce, Separate Maintenance, and Annulment* lectured before our Society under the auspices of our Legal Education Committee on December 10, at the Covenant Club, on "Migratory or inter-state divorce in the United States and its effect in Illinois." Mr. Weinberg's lecture will appear in a near issue of our Journal.

Calling All (Decalogue) Authors

Members of our Society, authors, who wrote and published books in various fields of literature or have contributed to periodicals on some aspects of law or kindred subjects will be honored by our organization, at a luncheon, in the Covenant Club on Friday, March 18.

A list of members already known to have distinguished themselves as authors of published works has been compiled by the committee in charge of the arrangements. Members are urged to cooperate by naming writers in our midst who should be invited to this luncheon. It is also requested that the author who wishes to participate, write to our secretary at 180 West Washington Street and list titles of his books and dates of their publication.

Morton Schaeffer, second vice-president, is in charge of this project.

MASTER ISIDORE BROWN

Member Isidore Brown was recently reappointed for his seventeenth consecutive term as Master in Chancery Circuit Court, Cook County. The latest reappointment—by Judge Wendell E. Green—establishes a new record for the County. During his 32 years of service Master Brown decided more than 6,000 cases. Active in communal endeavor and a member of several fraternal and professional organizations Master Brown is on the Board of Directors of The Exchange National Bank and The Reserve Insurance Company.

SAMUEL S. HERMAN, TOP PRODUCER

Member Samuel S. Herman, with the Connecticut Mutual Life Insurance Company, was the leader in his company's paid volume business for August and November, 1954. This is the third time the company has featured him as its top producer. Herman's ascendancy dates back from the time that he had joined the Connecticut in 1945. He has earned the National Quality Award since 1948. He is also a life member of the much coveted "million dollar round table" having attained that distinction for the past five consecutive years.

The New Illinois Civil Practice

By HARRY G. FINS

The Illinois Civil Practice Act was passed in 1933, and, in the same year, the Supreme Court of Illinois promulgated Rules to implement some of the provisions of the Act. Since 1933, the Act and the Rules were, from time to time, amended in comparatively minor respects, but no complete revision of the Act or Rules was made.

In 1938 the Supreme Court of the United States promulgated the Federal Rules of Civil Procedure, which Rules were materially amended in 1946. These Federal Rules have been working very efficiently and have pointed up the insufficiency and inefficiency of the procedures followed in many of the States, with the result that a number of the States have adopted the Federal Rules of Civil Procedure in part or in toto.

In Illinois, the Bench and Bar have come to the realization that in order to bring this State in line with modern methods of practice and procedure, a complete revision of the Illinois Civil Practice Act and the Rules of the Supreme Court of Illinois is needed.

In 1950, a Joint Committee of the Chicago Bar Association and of the Illinois State Bar Association was appointed at the suggestion of the Supreme Court of Illinois, with the object of reviewing, studying and recommending changes in Illinois practice in the light of 20 years' experience. This Committee has worked diligently on this project since its appointment, and on September 1, 1954, a Tentative Final Draft of the Proposed Amendments to the Civil Practice Act and Rules of the Supreme Court of Illinois was submitted to the Illinois Bench and Bar for approval and suggestions. These amendments aim to bring about the following changes in Illinois procedure:

Submission to Jurisdiction

Proposed Section 17 of the Civil Practice Act creates a very important innovation in Illinois procedural law. It provides that any person, who by himself or through an agent, does any one of the following four acts in Illinois, thereby submits to the jurisdiction of the Illinois courts as to any cause of action arising in this State from the doing of any of said acts, and may be served with process in or outside of Illinois, and a judgment in *personam* may be rendered against him:

(a) The transaction of any business within this State.
(b) The commission of a tortious act within this State.
(c) The ownership, use, or possession of any real estate situated in this State.
(d) The insuring of any person, property or risk located within this State, whether the policy is delivered by mail or otherwise.

As to constitutionality of above provisions, see *International Shoe Co.* v. *Washington*, 326 U. S. 310 (1943), and *Travelers Health Assn.* v. *Virginia*, 339 U. S. 643 (1950).

Action Against Joint Debtors or Partners

All parties to a joint obligation, including a partnership obligation, may be sued jointly, or separate actions may be brought against one or more of them. A judgment against fewer than all the parties to a joint or partnership obligation does not bar an action against those not included in the judgment or not sued (Sec. 27).

Action Against Partnership or Partners

A partnership may be sued in the name of the partners as individuals doing business as the partnership, or in the firm name, or both. An unsatisfied judgment against a partnership in its firm name does not bar an action to enforce the individual liability of any partner.

As to venue, it is provided that a partnership sued in its firm name is a resident of any county in which any partner resides or in which the partnership has an office or is doing business (Sec. 6(2).

As to service of process, it is provided that a partnership sued in its firm name may be served by leaving a copy of the process with any partner personally or with any agent of the partnership found anywhere in the State. A partnership sued in its firm name may also be notified by publication and mail in like manner and with like effect as individuals. When a personal judgment is sought against a partner for a partnership liability, the partner may be served (a) in any manner provided for service on individuals or (b) by leaving a copy of the summons for him with any other partner and mailing a copy of the summons in a sealed envelope with postage prepaid, addressed to the partner against whom the judgment is sought, at his usual place of abode as shown by an affidavit filed in the cause (Sec. 13.4).

It is contemplated that Chapter 77 of Illinois Revised Statutes, dealing with judgments, will be amended by the addition of a provision reading as follows:

> "A judgment rendered against a partnership in its firm name shall support execution only against property of the partnership and shall not constitute a lien upon real estate other than that held in the firm name."

Summons and Complaint to be Served

The defendant is to be served with summons and complaint (Rule 5). This will bring the procedure on the subject in harmony with the Federal practice and the practice in the Municipal Court of Chicago.

Alias Writs

On request of any party the clerk shall issue successive alias summons regardless of the disposition of any summons or alias summons previously issued.

The court may order the issuance of alias writs (other than summons) regardless of the disposition of writs previously issued (Rule 4).

Service of Process Outside Illinois

Personal service of summons may be made on any party outside the State. If upon a citizen or resident of this State or upon a person who has submitted to the jurisdiction of the courts of this State, it shall

have the force and effect of personal service of summons within the State; otherwise it shall have the force and effect of service by publication (Sec. 16(1)). (As to constitutionality, see *Millikin* v. *Meyer*, 311 U. S. 457 (1940)).

Return Day 30 Days After Service

The first and third Monday of the month as return days are abolished, and the return day for the filing of an appearance is set as 30 days after service of process regardless on what day of the week it falls (Rule 2).

Special Appearance

Special appearance is available only if the defendant is not amenable to process issued by an Illinois court. All other appearances constitute general appearances (Sec. 20).

Motion to Transfer

If an action is brought in the wrong court or county, the remedy is a motion to transfer to the proper court in Illinois (Sec. 8).

Transfer for Lack of Jurisdiction

Whenever it shall appear that an action has been commenced in a court which does not have jurisdiction to determine the action, then the Court shall, at any time, upon its own motion, or upon the motion of any party, order the cause transferred to a court of competent jurisdiction in a proper venue. In the event of reversal upon appeal of any order, judgment or decree for lack of jurisdiction by the Court entering the same, the reviewing court on motion made within the time for filing a petition for rehearing shall remand the cause to afford an opportunity to apply for transfer to a proper court (Sec. 10). This will overcome the hardship caused by *Werner* v. *Illinois Central R. Co.*, 379 Ill. 559, and other cases following it.

Joinder of Causes of Action

If a cause of action is one heretofore cognizable only after another cause of action has been prosecuted to a conclusion, the two causes of action may be joined; but the court shall grant relief only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may join a cause of action for money damages and a cause of action to set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the cause of action for money damages (Sec. 44).

Form of Pleadings

Section 33 of the Civil Practice Act provides that the common courts shall not be used.

Reply to New Matter

If the answer contains new matter, the filing of a reply is not an admission of the substantive legal sufficiency of the new matter (Sec. 32).

Relief Against Defaulted Party

In case of default, if relief is sought beyond that prayed in the pleading to which the party is in default, whether by amendment, counterclaim, or otherwise, notice is to be given the defaulted party in accordance with Rule 7.1 of the Supreme Court of Illinois (Sec. 34).

Third Party Practice

Third party proceedings are made available (Sec. 25). This will bring the procedure on the subject in harmony with Rule 14 of the Federal Rule of Civil Procedure and Rule 25 of the Municipal Court of Chicago.

Intervention

Liberal intervention is provided for (Sec. 26.1). Express provision is made for intervention by the State in cases involving the validity of a constitutional provision, statute or regulation of the State and affecting the public interest. Likewise, express provision is made for intervention by a municipality or governmental subdivision in cases involving the validity of an ordinance or regulation of a municipality or governmental subdivision and affecting the public interest.

Interpleader

Statutory interpleader is made available. This remedy is patterned after the Federal Rule on the subject and is much broader than equitable interpleader heretofore available in Illinois (Sec. 26.2).

Substitution of Parties

If substitution of parties is to be made because of change of interest or liability or because of death, then the substituted parties are to be brought in by service of process. If the substitution of parties is to be made because of incompetency or because a trustee of public officer dies, resigns, or otherwise ceases to hold the trust office, service of process is not required on the substituted parties but notice is to be given as the court may direct (Sec. 54).

Fitzpatrick v. Pitcairn Reversed

In *Fitzpatrick* v. *Pitcairn*, 371 Ill. 203, the plaintiff filed an action for wrongful death against a railroad. While the case was pending but subsequent to the expiration of the one year period for the filing of a wrongful death action, the attorney for the plaintiff discovered that the railroad had been in receivership for a number of years. He then made the receiver of the railroad a party defendant and served him with process. The receiver filed a motion to dismiss because the suit against him was begun after the expiration of the one year period. His motion was sustained. The Supreme Court affirmed and refused to treat the railroad and the receiver as one and the same entity. The doctrine of the *Fitzpatrick* case has since been followed in several Appellate Court cases. This doctrine is now changed by Section 46.4.

Motion to Dismiss

Section 48 of the Illinois Civil Practice Act provides for motions to dismiss because of lack of jurisdiction of the subject matter, plaintiff's lack of legal capacity to sue, the pendency of another action, res judicata, statute of limitations, release, statute of frauds, and defendant's infancy or other disability. This section has been enlarged by adding thereto as grounds for a motion to dismiss (1) that the defendant does not have legal capacity to be sued, (2) that the claim was satisfied of record, and (3) that the claim was discharged in bankruptcy.

In addition to the above, the following was added

as a ground for dismissal: "That the claim or demand asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim or demand." This will overcome the holding in *Hansen* v. *Raleigh*, 391 Ill. 536, where the Supreme Court held that the defendant's statutory immunity could not be raised by motion to dismiss under Section 48 of the Civil Practice Act.

Discovery

The discovery rules are completely revised and patterned after the Federal Rules of Civil Procedure:

1. Discovery of documents, objects, tangible things and real property (Rule 17).
2. Admission of facts and of genuineness of documents (Rule 18).
3. Written interrogatories to parties (Rule 19.11).
4. Deposition upon oral interrogatories (Rule 19.6.).
5. Deposition upon written interrogatories (Rule 19.7).
6. Deposition before action or pending appeal —perpetuating testimony (Rule 21).

Notice to List Documents Stays Pleading Time

Unless ordered otherwise, service by a party of a notice to list documents, objects and tangible things operates to stay the time for filing and serving a pleading of that party until the list is filed and served. He shall then have the like time to file and serve his pleading to which he was entitled at the time he served the notice (Rule 17(9)). This provision is similar to a notice demanding a bill of particulars, which, in accordance with Section 37 of the Illinois Civil Practice Act, stays the time for pleading until the bill of particulars is supplied.

Request for Admission of Facts or Documents

Rule 18 provides that each of the matters of which an admission is requested shall be deemed to be admitted unless, within 10 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either (a) a sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or (b) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part, together with a notice of hearing the objections at the earliest practical time. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder.

Penalties Relating to Discovery and Deposition

By virtue of Section 3 of the Civil Practice Act and Rule 19.12 of the Supreme Court, any one of the following penalties may be imposed by the court in connection with discovery or deposition: (1) that the party be nonsuited; (2) that the complaint be dismissed; (3) that all or any part of the pleadings be stricken and judgment be rendered on the remaining pleadings; (4) that he be debarred from filing any other pleading; (5) that he be debarred from maintaining any particular claim, counterclaim, third party complaint, or defense respecting which discovery is sought; (6) that further proceedings be stayed pending compliance; and (7) contempt proceedings to compel obedience to any order entered.

Deposition by Notice or by Subpoena

The deposition of a party, or of an officer or agent of a party, to the action is to be taken by the service of a notice only, without a subpoena and without an order of court. The deposition of a witness (other than a party or officer or agent of a party) is to be taken by the service of a subpoena. The subpoena is to be issued by the clerk of the trial court, not by the notary or other officer before whom the deposition is to be taken. (Rule 19.8(1)).

Two Types of Depositions

There will be two types of depositions (Rule 19):

(a) Deposition for evidence (Rule 19.10(3)) with a narrow scope of admissibility of evidence, the same as on the actual trial of the case (Rule 19.4).

(b) Deposition for discovery (Rule 19.10(2)) with a broader scope of admissibility of evidence, where the deponent may be examined regarding any matter, not privileged, relating to the merits of the case (Rule 19.4).

The notice, order, or stipulation to take a deposition should specify whether it is a discovery or evidence deposition and in the absence of specification, the deposition is to be a discovery deposition only.

If both discovery and evidence depositions are desired of the same witness, they are to be taken separately unless the parties stipulate otherwise.

Place of Taking Deposition

A deponent may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of court. The court may, however, in its discretion, order a non-resident plaintiff or an officer or managing agent thereof, in an action pending in this State, to appear at a designated place in this State or elsewhere for the purpose of having his deposition taken, upon such terms and conditions as may be just, including payment by defendant of the reasonable travel expenses of the deponent (Rule 19.8(3)). This will change the rule laid down by the Supreme Court in *People ex rel.* v. *Graber*, 397 Ill. 522.

Notice of Filing Deposition

The party causing a deposition to be filed shall promptly serve notice thereof on the other parties. (Rule 19.7 (3)).

Effects of Deposition and Discovery Procedure

Rule 20 of the Supreme Court provides that a party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The use or reading in evidence of any part of a deposition for any

purpose other than that of impeaching or proving an admission by the deponent makes the deponent the witness of the party using or reading the deposition, but only to the same extent as if the deponent were testifying in person, and subject to the provisions of Section 60 of the Civil Practice Act. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party. No disclosure as to any matter obtained by discovery shall be conclusive but may be contradicted by other testimony or evidence.

Illinois Deposition for Out of State Cases

Any officer or person authorized by the laws of another state, territory or country to take any deposition in this State, with or without a commission, in any action pending in a court of that state, territory or country may petition a court of record in the county in which the deponent resides or is employed or transacts his business in person or is found for a subpoena to compel the appearance of the deponent or for an order to compel the giving of testimony by him. The court may hear an act upon the petition with or without notice, as the court directs (Rule 19.8(2)).

Partial Disposition

Where there are multiple parties or multiple claims and the court makes a partial disposition of the case, the order may be made appealable only upon an express finding by the court that there is no just reason for delaying enforcement or appeal (Sec. 50 (2)). This is patterned after Rule 54(b) of the Federal Rules of Civil Procedure.

Contribution by Parties

When relief is granted against a party who upon satisfying the same in whole or in part will be entitled by operation of law to be reimbursed by another party to the action, the Court may determine the rights of the parties as between themselves, and may thereafter upon notice and motion in the cause, and upon a showing that satisfaction has been made, render a final judgment or decree against the other party accordingly (Sec. 50(1)).

Notice of Default or Dismissal

Upon entry of a default or dismissal for want of prosecution, the clerk of court is to give notice to the attorneys or parties whose appearance is on file. However, the failure of the clerk to give the notice does not impair the force, validity, or effect of the order (Sec. 50.1).

Subrogation

Section 22 of the Civil Practice Act is amended by the addition of a provision that a judgment in an action brought and conducted by a subrogee by virtue of the subrogation provision of any contract or by virtue of any subrogation by operation of law, whether in the name of the subrogor or otherwise is not a bar or a determination on the merits of the case or any aspect thereof in an action by the subrogor to recover upon any other cause of action arising from the same transaction or series of transactions.

Class Action

Section 52.1 provides that an action brought on behalf of a class shall not be compromised or dismissed except with the approval of the court and, unless excused for good cause shown, upon notice as the court may direct.

Summary Judgment

At present summary judgment is limited in Illinois to four classes of cases: (1) upon a contract, express or implied, (2) upon a judgment or decree for the payment of money, (3) to recover possession of lands, with or without rent or mesne profits, and (4) to recover possession of specific chattels. The new Section 57 is patterned after Rule 56 of the Federal Rules of Civil Procedure and is made available in all cases, without limitation as to class.

Like Rule 56 of the Federal Rules of Civil Procedure, the new Section 57 also provides that a summary judgment or decree, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Subpoenas

For good cause shown, the court on motion may quash or modify any subpoena or, in the case of a subpoena duces tecum, condition the denial of the motion upon payment in advance by the person in whose behalf the subpoena is issued of the reasonable expense of producing any item therein specified (Sec. 62).

Examination of Hostile Witnesses

Three important changes were made in Section 60 of the Civil Practice Act:

(1) Officers, directors, managing agents, or supervising employees of any party to the action (not only corporation), may be examined under cross examination.

(2) Any witness who is shown in advance or later proves to be hostile or unwilling may also be examined as if under cross examination.

(3) The witness may be impeached. This will overcome the decisions of the Supreme Court of Illinois which hold that the testimony of an adverse witness may only be rebutted but that the witness may not be impeached. See *American Hoist & Derrick Co.* v. *Hall,* 208 Ill. 597; *Luthy & Co.* v. *Paradis,* 299 Ill. 380; *Chance* v. *Kinsella,* 310 Ill. 515; *Donovan* v. *Newman,* 409 Ill. 195.

Jury Demand

A jury demand is to be made by the defendant at the time of filing the answer, not at the time of the filing of the appearance (Sec. 64(1)).

Several Grounds of Recovery

If several grounds of recovery are pleaded in support of the same demand, whether in the same or different counts, an entire verdict rendered for that demand shall not be set aside or reversed for the reason that any ground is defective, if one or more of the grounds be sufficient to sustain the verdict; nor shall the verdict be set aside or reversed for the reason that the evidence in support of any ground is insufficient to sustain a recovery thereon, unless before the case was submitted to the jury a motion was made to withdraw that ground from the jury on account of insufficient

evidence and it appears that denial of the motion is prejudicial (Sec. 68(4)).

Assessment of Damages

Unless a jury has been waived, the trial court shall empanel a jury to assess damages: (a) if the ruling on a post-trial motion is in favor of a party entitled to recover damages and there is no verdict assessing his damages; or (b) the Appellate or Supreme Court remands solely for the purpose of assessing damages (Sec. 68.2).

Special Interrogatories to Jury

Special interrogatories to jury are to be tendered, objected to, ruled upon and submitted to the jury as in the case of instructions (Sec. 65). This will overcome several recent Appellate Court cases which held that exceptions are necessary to the submission of special interrogatories.

Peremptory Challenges

Each side (not each party) shall be entitled to 5 peremptory challenges. If there is more than one party on any side, the court may allow each side additional peremptory challenges, not to exceed 3, on account of each additional party on the side having the greatest number of parties. Each side shall be allowed an equal number of peremptory challenges. If the parties on a side are unable to agree upon the allocation of peremptory challenges among themselves, the allocation shall be determined by the court. (Rule 66(1)).

Alternate Jurors

Alternate jurors are provided for (Sec. 66(2)).

Jury Instructions

The following changes were made in Section 67 of the Civil Practice Act:

(1) Jury instructions are to be submitted in duplicate. The original is to go to the jury and the copy is to be numbered and is to show who tendered it. On appeal only the copies need be incorporated in the report of proceedings.

(2) Objections to jury instructions must be made before the argument to the jury and the objections must be specific.

Post Trial Motion in Jury Cases

A single post trial motion in jury cases is substituted for the remedies heretofore available by (1) reserved motion for directed verdict, (2) motion for judgment non obstante veredicto, (3) motion for judgment notwithstanding the verdict, (4) motion in arrest of judgment, and (5) motion for new trial (Sec. 68.1).

Post Trial Motion in Non-Jury Cases

A single motion after decree or judgment in non-jury cases is substituted for the remedies heretofore available by (1) motion for rehearing, (2) motion to offer additional evidence, (3) motion for a re-trial, (4) motion for modification of decree or judgment, (5) motion to vacate decree or judgment, and (6) any other relief (Sec. 68.3).

Relief from Judgment or Decree

Writs of error coram nobis, writs of error coram vobis, writs of audita querela, bills of review, and bills in the nature of bills of review are abolished.

Petition for relief from final judgment or decree is substituted for the remedies heretofore available by (1) writ of error coram nobis, (2) writ of error coram vobis, (3) writ of audita querela, (4) bill of review, and (5) bill in the nature of bill of review.

The petition is to be filed not later than 2 years after the entry of the order, judgment or decree. Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed is to be excluded in computing the period of 2 years.

Any order entered denying or granting any of the relief prayed in the petition is appealable (Sec. 72).

Notice of the filing of a petition for relief from a final order, judgment or decree is to be given in accordance with Rule 7.1 of the Supreme Court of Illinois.

Supplementary Proceedings

In supplementary proceedings to enforce judgments, the court is given power (1) to compel full discovery of property available, (2) to collect the judgment debtor's property which is in the hands of third parties, (3) to order the assignment or transfer of property, (4) to enjoin the transfer of property, (5) to arrange for installment payments, and (6) to order the judgment creditor to maintain an action against persons indebted to the judgment debtor (Sec. 73 of Civil Practice Act and Rule 24 of Supreme Court of Illinois).

Dismissal of Appeal by Trial Court

By stipulation of the parties, an appeal may be dismissed by the trial court (Rule 36(1)(e)).

Appeal from Appellate to Supreme Court Instead of Writ of Error

Where a constitutional question involving the validity of a statute arises for the first time in the Appellate Court, review by the Supreme Court is a matter of right whether the order is final or interlocutory. This review will now be by appeal, instead of writ of error as heretofore (Sec. 74).

No Cross-Appeal Necessary in Appeal from Appellate to Supreme Court

In all appeals, by whatever method, from the Appellate to the Supreme Court, any appellee, respondent, or co-party may seek and obtain any relief warranted by the record on appeal without having filed a separate petition for leave to appeal or notice of cross-appeal or separate appeal (Rule 32(4)).

Jurisdictional Statement

In appeals from the trial court directly to the Supreme Court and in appeals from the Appellate Court to the Supreme Court as a matter of right, the appellant's brief must contain a Jurisdictional Statement, showing that the Supreme Court has jurisdiction of the appeal (Rules 32(3) and 39(1)).

Coordination of Supreme and Appellate Court Rules

The rules of the Supreme Court of Illinois have been coordinated with the Uniform Appellate Court Rules of Illinois.

IMPORTANT CHANGES IN THE 1954 REVENUE CODE

A series of seven lectures and discussions all by members of our Society on "Important Changes in the 1954 Revenue Code" has been arranged by our Legal Education Committee.

All sessions are held on Wednesdays at 4:00 P.M. in the offices of our Society at 180 West Washington Street.

Dates of forthcoming lectures:

February 16, 1955 HOWARD SLATER
CORPORATE DISTRIBUTIONS—OTHER THAN IN LIQUIDATION.

February 23, 1955 DAVID ALTMAN
CORPORATE LIQUIDATIONS.

March 2, 1955 BENJAMIN BECKER
TRUSTS AND ESTATE PLANNING.

March 9, 1955 PAUL G. ANNES
REAL ESTATE TRANSACTIONS.

The following lectures were already held: Individuals and Individual Proprietors, Eugene Bernstein; Partnerships, Max Reinstein; Life Insurance and Annuities, Bernard Epstein.

Maynard I. Wishner is chairman of Decalogue Legal Education Committee.

WINS FULBRIGHT SCHOLARSHIP

Charles Max Goldstein, son of member Herman B. Goldstein, has been awarded a Fulbright Scholarship to the Technical University at Darmstadt, Germany. Young Goldstein will spend the next year in advanced study of engineering as part of our State Department student exchange program.

INTER-AMERICAN BAR ASSOCIATION

Robert F. Storey, President of the Inter-American Bar Association announces that the ninth conference of the association will be held in Dallas, Texas, April 16 to 21, 1956. A special meeting of the Council of the Association will be held on April 29, 1955 at New York University.

The Decalogue Society of Lawyers is a member of the Inter-American Bar Association.

MAXWELL ABBELL HEADS U. S. ANTI-DISCRIMINATION COMMITTEE

Member Maxwell Abbell widely known for his communal, philanthropic, and religious activities and interests was appointed by President Eisenhower, chairman of the President's Committee on Government Employment Practices. The function of the Committee is to prevent any discrimination against government workers, on the basis of race, color, creed or national origin, in hiring and firing procedures.

Two other Chicagoans, lawyers, appointed on this committee, are Archibald J. Carey, Jr., and Ernest Wilkins.

ARCHIE H. COHEN ACTIVE

Past president Archie H. Cohen, presently with the Board of Review of the General Service Administration, Washington, D. C., scored another record in the field of philanthropy. A director in the Annual Community Chest Campaign in that city, Archie's leadership in the Central Office which consists of 1,965 employees achieved 104 per cent of the assigned quota!

MASTER SAMUEL BERKE INSTALLED

Member Samuel Berke, master in Chancery, Superior Court, was installed as President of the Jerome D. Solomon Foundation on January 5, at the Covenant Club. The Solomon Foundation is affiliated with the Hectoen Institute and the Cook County hospital and lends its aid to both in furtherance of its intense interest in medical research.

Judge Henry L. Burman was the installing officer. Dr. Percy Julian was the speaker of the evening.

HELP WANTED

If your office is in need of an alert, recently admitted to the Illinois Bar young lawyer, eager to make good, the Decalogue Placement Bureau has such a man for you!

If interested please telephone Michael Levin, chairman, ANdover 3-3186, who will gladly arrange an interview with the applicant.

Insurance With Other Insurers

Herman Goldstein, a member of the Decalogue Insurance Committee, writes to direct the attention of our Society to the following provision of the new Insurance Code of the State of Illinois: (Chapter 73 Illinois Revised Statutes, Paragraph 969a (2) (d):

"INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis *and of which this insurer has not been given written notice prior to the occurrence or commencement of loss,* the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro-rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the 'like amount' of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage."

In view of the above provision it is therefore recommended to all members who have more than one health and accident policy, that they give notice of such other insurance to each one of the insurance companies, to the end that in the event of a loss, that he will be paid the full amount of the coverage of each policy and not be paid a prorated amount as provided by this Section.

Alec E. Weinrob is chairman of The Decalogue Insurance Committee.

BEN ARONIN WRITES NEW BOOK

Member Ben Aronin, already the author of several books, will soon publish another volume, *Walt Whitman's Secret,* a biographical narrative dealing with the life of the great American poet.

The forthcoming book has been selected as its choice for 1955 by the American Book Club.

SALUTE TO THE BENCH

The Decalogue annual cocktail party in honor of all sitting Judges in Cook County was held on December 22, at the Covenant Club. It proved as ever a most popular and an exceptionally well attended affair. Bernard H. Sokol, First Vice President was in charge of arrangements.

ALEX M. GOLMAN

The Chicago Jewish community has suffered a grievous loss in the passing of member Alex M. Golman. Born in Chicago in 1893, Golman's name is linked with many cultural and philanthropic enterprises. His education was received in the public and high schools of Chicago, business college, and the Kent College of Law from where he was graduated in 1917. A life long Zionist, he held in the local Zionist organization, several important posts. He was a member of the Illinois and American Bar Associations and he was a founder and a charter member of The Decalogue Society of Lawyers.

Since its foundation Golman was an indefatigable and a devoted member of our Society. He served with distinction on nearly every committee throughout the two decades of our organization's existence. He was for several terms a member of our Society's board of managers. At his death he was chairman of the Decalogue's Speakers Bureau where he had made an enviable record.

Golman's outstanding characteristics were his enthusiasm for the sponsorship of cultural projects, and his love of Hebrew lore. He was the eternal student of Jewish learning and a passionate believer in the destiny of the Jewish people. The emergence of Israel as an independent State was regarded by him as if a personal triumph. Among those who knew him intimately throughout his life—and this writer is happily among them—Golman was deeply esteemed as a public spirited citizen.

Surviving him are his widow Rae, his daughter Mrs. Blossom Parthos, two brothers, and a sister. —*The Editor*

BLUE RIBBON FOR NUDELMAN

The Stereo Camera Club of Chicago, the largest exclusively stereo camera organization in the country, awarded recently a Blue Ribbon to past president Oscar M. Nudelman for his slide "Einstein in His Study."

The picture was taken by Nudelman last February at Princeton, New Jersey in the home of the famous scientist, the recipient of The Decalogue Award of Merit for 1953.

WORKMEN'S COMPENSATION

Member Arthur O. Kane addressed our Society on Workmen's Compensation Practice on January 21, in the Covenant Club. Mr. Kane spoke under the auspices of the Decalogue Legal Education Committee.

Advocacy at the Bar*

By BERNARD H. SOKOL

In these days, when champions are frequently wanting for unpopular causes, when the interest in advocacy has been diminished by the attractiveness of office practice, when the law schools cater to the theoretical rather than the pragmatic function of the law, when, indeed, the general level of articulation in the profession is acknowledged to be rather low, a book written by a great trial lawyer reflecting on these ills must be welcomed.

During the winter of 1952-53, Mr. Stryker delivered fourteen lectures before the Yale Law School on the subject of advocacy. He discussed every step of a case—the first meeting with the client, the search for the facts, for legal precedents, the preparation for trial, selection of jurors, psychological aspects, opening address, summation, and, with particular emphasis, the fascinating art of cross-examination. In response to demand, the lectures now appear in book form.

In re-arranging what must have originally been technical lectures, Mr. Stryker has made the book understandable to laymen as well as professionals, adding rather than diminishing the vigor of his argument by biographical references to great advocates of the past.

A number of years ago a book was published called *The Art of Seeing*. Intended by Aldous Huxley as a guide to improved eyesight through a series of exercises, it became much more. Intended or not, the book might have been, with other application, entitled *The Art of Accomplishment*. Huxley's seeker after better sight was advised to look to his posture, his emotions, his walk, his memory, his imagination, as well as the mechanical aspects of muscle exercise. Thus, Martin Littleton (Stryker's mentor) could read of Shakespeare, the Bible, Cicero, baseball, and varied topics within the realm of the mundane—always "in preparation for the next case." Stryker's novice can do no less. The successful advocate must be a whole man. As the author points out:

"In general and above all, the advocate must, through study of the law and many other subjects, have acquired a ready and supple mind. His traversing of many fields must have given a facility for mastering others. In representing a banker he must have mastered accounting and finance. In appearing for a writer, he must know literature; for a soldier, tactics and strategy; for a doctor, a conception of anatomy and of the whole philosophy of the healing art. In short, to acquire all this ability and to do all these things takes a large man; nor can he hope to triumph except through long study, great experience, and a profound observation of the world we live in, of its history, its literature, and of the men and women who compose such civilization as we have."

The whole man, however, must have a model as well as an ideal. Some of the successes of Max Steuer, Thomas Erkskine and Daniel Webster derived from healthy emulation of other great advocates. In Stryker's description, however, this devotion becomes more creativeness than imitation.

Not long ago, Justice Walter Schaeffer, in speaking to the Decalogue Society, referred to the slip-shod manner and shameful lack of preparedness in Appellate counsel often heard by the Supreme Court of our State. Justice Schaeffer referred to the want of conscientiousness in presentation of what were very important matters. This lack of the concept of credit, once so prevalent in American life, has been deplored by many observers of the American scene. The canned argument has taken its place with the canned brief.

What of this low estate to which advocacy has fallen? What are the reasons? Mr. Stryker bemoans the indifference of law schools and deplores the lack of zeal in those who must bring a message to the public. Legal education, more interested in the cloistered discussion of theory than in the method in which it is made to work, rarely speaks of those forces which make the law noble. Society has come to indulge the second rate speech, the parroting of cliches, and demands little from one charged with bringing a message of importance.

In accounting for the reasons why the quality of advocacy is wanting, Judge Harold Medina, in the introduction, is far more cogent. The eminent jurist, himself an advocate of great

* *The Art of Advocacy*, by Lloyd Paul Stryker. Simon and Schuster. 306 pp. $5.00.

accomplishment, speaks of the economics and of psychological and social aspects of our condition. More regular fees come to the office practitioner; the shift away from lawyers' offices as traditional training grounds has discouraged the personal interest of successful practitioners in taking time with young men; much practice depends today on bringing to the forum an abundance of records, laboriously accumulated. Further, criminal law has fallen into disfavor—the larger and more successful firms will not soil their hands with it—nor will they encourage young men to follow it; public hysteria condemns the representative of a man charged with crime and, particularly, with those cases where constitutional questions concern other members of the community. In addition, Judge Medina refers to a particular experience of persons who engage in Federal practice:

"But now with all the powers of investigation which are at the disposal of the modern prosecutor, it is by no means rare to see cases last as long as from six weeks up to several months. As lawyers put it, the prosecution 'throws in everything but the kitchen stove.' If this tendency to over-try their cases is continued by prosecutors generally, the inevitable result will be that none but the professional racketeer will possess the funds necessary to employ a lawyer for his defense, nor will there be found lawyers who can afford to give so much of their time to any one particular case."

Justice Medina speaks not only as a jurist of acknowledged ability, but as an advocate previously subjected to the same problems. During the Second World War he felt the wrath of public opinion when he defended Anthony Kramer, a person charged with treason in collaborating with Nazi saboteurs. Few will deny the need for persons willing to suffer the wrath of public opinion in upholding the traditional concepts of a free trial; few will encourage a young man in the practice of law to follow that star which would bring him the taint of unpopular defendants or causes.

Mr. Stryker believes that a divided Bar, such as England has, is the solution. Nor would he wait for an evolutionary process to accomplish this. He states that an intelligent division of labor is the most certain means of assuring labor well performed.

It is difficult to agree that the divided Bar could be attempted in the United States in the same form or even resembling any form advanced by the author. Not even Canada, our neighbor, has been able to maintain a divided Bar. The reason probably is that the practice of law in Britain is to a considerable extent an element of an urbane society in which the concept of class levels is fairly ingrained. While one in Britain may strive to improve the level of professional ability and status, one nevertheless considers its finite elements with respect. Mr. Stryker's suggestion, however, has stimulated much discussion and many Bar Associations have taken up the subject as a matter of debate, and it is hoped that the conferences which he has inspired will be of some help.

The author believes that the fire is almost out. He sees the need for a radical change in order to restore vigor once present in the American Bar. He would surely agree however, with the conclusion of Judge Medina that the panacea lies more in the means whereby the spiritual can once again be infused in the practice of law, to light a spark in the mind of the young lawyer and, impart, in some fashion a determination to see that justice is done through his work. One might say, after reading this book, that Stryker not only has the spark, but he has the capacity to pass it on.

Liberty National Trust Department Now With The Chicago National Bank

As a result of the merger of the Liberty National Bank with the Chicago National Bank, the Trust Department of The Liberty Bank, intact, headed by member Edward Contorer, Vice-President and Trust Officer, will function henceforth from the Chicago National Bank quarters, 120 South La Salle Street.

The official staff of the new Trust Department consists of Edward Contorer, Vice President and Trust Officer; Alfred E. Gallo and Herman A. Kole, Trust Officers; Richard J. Walker is Assistant Trust Officer.

Mr. Contorer has expressed deep confidence in the ability of his department and its determination to continue to render to the legal profession of Chicago helpful and efficient Trust Service.

CONGRATULATIONS

Member Leo Wulfsohn, former Chicagoan, was appointed Justice of the Peace for Dyer Township, Saline County, Arkansas.

BOOK REVIEWS

Principles of International Law, by Hans Kelsen. New York. Rinehart & Company, Inc. xvii + 461 pp. $5.00.

Reviewed by A. H. ROBBINS

Member A. H. Robbins is a Ph. B. and J. D. of the University of Chicago and has also studied law in England, Germany and France. He is a barrister-at-law who has practiced in London since 1931. He was a member of the American Embassy in London during the last war. He has written on various legal topics for American and English publications.

Professor Kelsen, one of the contemporary masters of international law, develops in this provocative book his theory of international law and presents its "most important norms." He demonstrates how international law fits into his well known general theory of law as developed in the author's *General Theory of Law and State* and *The Law of the United Nations* (1950).

Designed primarily as an introduction for students, this book nevertheless seems too theoretical for their first venture and they might do better to read first a standard work with a practical approach to the subject. On the other hand, it will be a good introduction for a lawyer in general practice (especially one with a theoretical legal bent), however uninitiated in international law, for in this effort of a powerful philosophical and analytical mind there emerges a clear picture of its architecture and of many of its outstanding and controversial problems.

A bare statement of Professor Kelsen's basic ideals may give a helpful indication of the way he develops his theory.

"A social order that attempts to bring about the desired conduct of individuals by sanctions we call a coercive order, in the sense that it provides for coercive acts as sanctions." Law is a coercive order. "It provides for socially organized sanctions. . . . As a coercive order the law is that specific social technique which consists in the attempt to bring about the desired social conduct of men through the threat of a measure of coercion which is to be taken in case of contrary, i.e., legally wrong, conduct."

Assuming that the foregoing analysis is correct, "it is possible to describe the law of a community, its legal order, by a system of sentences stating that under certain conditions a certain act of coercion ought to be performed." Thus, "international law is law in the same sense as national law, provided that it is, in principle, possible to interpret the employment of force directed by one state against another either as sanction or as delict." Since "it is a commonly accepted opinion that there exists in international law such a thing as a delict, and, on the other hand, also a sanction —reprisals and war—there necessarily must be international law."

"International law is a normative order, and a normative order is a system of valid norms. Legal norms regulate human behavior, and human behavior takes place in time and space. . . . Hence we speak of a temporal and a territorial sphere of validity of legal norms or a legal order." Accordingly, "the decisive question for all these spheres of validity is whether they are limited or unlimited. . . . The normative order traditionally called international law does not contain norms limiting its spheres of validity; and insofar as this normative order is considered as a supreme legal order which is not under any other legal order, the validity of the international order cannot be limited in any direction. This is exactly what distinguishes the international legal order from a national legal order. . . ." The international legal order is a supreme order since "there is no other legal order that can be considered as superior to the national legal orders . . .".

"The constitution of the international community is the set of rules of international law which regulate the creation of international law, or, in other terms, which determine the 'sources' of international law. The norm which regulates the creation of other norms is 'superior' to the norms which are created according to the former. The norms created according to the provisions of another norm are 'inferior' to the latter. In this sense, any superior legal norm is the source of the inferior legal norm." Consequently, "creation and application of law are only relatively, not absolutely opposed to each other. In regulating its own creation, law regulates also its own application. By 'source' of law not only the methods of creating law but also the methods of applying law may be understood." Custom and treaties are the two principal methods of creating international law. The traditional doctrine of "gaps in international law" is incorrect since if there is no rule imposing an obligation upon a state to behave in a certain way, the fundamental principle applicable is that "what is not legally forbidden to the subjects of the law is legally permitted to them."

In Part V the author considers the relationship between international and national law. He upholds the monistic view "that the international legal order is significant only as part of a universal legal order which comprises also

all the national legal orders . . . the international legal order determines the territorial, personal, and temporal spheres of validity of the national legal orders, thus making possible the coexistence of a multitude of states." He champions this monistic view against a strongly held pluralistic view that "international law and national law are . . . two separate, mutually independent legal orders that regulate quite different matters and have quite different sources." However, as between the two monistic interpretations possible: giving primacy to the international legal order or to the national legal orders, Professor Kelsen admits that the choice is not primarily determined by "the science of law," although the choice may be important ethically or politically.

The author abandons the classical division between the laws of peace and war. He upholds the minority doctrine that the subjects of international law are human beings and not states. He has given up his former view as to the recognition of governments: he now holds that legal recognition is a constitutive act as distinguished from political recognition which he still maintains to be a declaratory act. The knotty problem of distinguishing between legal and political disputes is resolved not on traditional view that it depends on the nature of the subject matter of the dispute but on the nature of the norm to be applied in settling it.

There is much that is controversial in this book—and possibly it does not give sufficient recognition to the complexities and difficulties involved in deciding specific cases—but it is the work of a profound theoretical thinker who can analyze the entire structure of international law with enviable clarity and erudition. Perhaps the best way to appreciate the merits of Professor Kelsen's contribution is to read, or even skim through, any standard text on the subject. His work will be studied carefully by international lawyers and scholars—it should be read by every lawyer who has some interest in international law or indeed in international politics.

Immigration and Nationality Act Annotated, with Rules and Regulations. By Sidney Kansas. 1953. Immigration Publications. 694 pp. $10.00.

Reviewed by ELMER GERTZ

The first edition of this exhaustive work was published in 1927 after the first quota restrictions were enacted. Albert Johnson, who fathered this reversal of American policy, and was the Chairman of the House Committee on Immigration and Naturalization, wrote a brief foreword to the book. Brief as it was, it breathed the suspicion of foreigners, which was the basis of the restrictive legislation.

The fourth edition, published in 1953, contains an equally brief foreword by the late Senator Pat McCarran, who fathered the notorious McCarran-Walter Act. Brief as it is, it breathes the same suspicion of foreigners that characterized the new legislation.

The author sums up the Immigration and Nationality Act in a one-page Preface and proceeds to the business at hand, without wasting words. So complex is the situation that even an author who strives not to be prolix requires almost 700 pages to cover the field. Mr. Kansas starts with a history of immigration legislation in a bit more than twenty pages, goes on to a ten-page statement of the General Principles of the Act, and in almost twenty pages gives the essence of the practice and procedure. In the next 200 pages of his book, Mr. Kansas gives the actual text of the Act and annotations in which he summarizes the case law and other authorities and makes observation as to the effect of the language used. This long section is invaluable to anyone working on immigration and naturalization matters, as it is a quick and sensible guide to the perplexed on a subject that breeds confusion if not despair.

The Appendix is even longer, running over 400 pages and giving outlines of the related Internal Security Act of 1950, the highly complicated Rules and Regulations under the Immigration and Nationality Act keyed into the Act itself, the supplements and addenda to these Rules as promulgated from time to time, the Refugee Relief Act of 1953, and much miscellaneous material. There is an excellent Index.

In short, for those who want to have a quick view of the law, this is an excellent work, and equally so for those who want a more detailed analysis, It belongs in the library not only of those who do a good deal of work in this field, but in the libraries of all lawyers, as the subject now permeates our national life—for better or for worse. As a not impartial reviewer, one can only hope that the revision or repeal of the McCarran-Walter Act will necessitate a new edition of this work.

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